IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 602 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI MANGABHAI PARMAR

Versus

PUSHPABEN GOVINDBHAI PARMAR

Appearance:

1. Criminal Revision Application No. 602 of 2001

MS SADHANA SAGAR for Petitioner No. 1

Notice to Respondent no.1 not received back

MR HL JANI, PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/12/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. Delay is condoned.

#. This Revision Application under Section 397 read with Section 401 CrPC has been preferred by the convict through jail against the order of conviction and sentence recorded on 15th September, 2000 by the learned Judge, Family Court, Ahmedabad in Misc.Application No. 2233/2000.

#. The petitioner is the husband who was, under order dated 29th March, 1994 made in Misc.Application No.174/92, ordered to pay monthly maintenance of Rs.500=00 to his estranged wife, the respondent no.1 and three minor children. It appears that at the relevant time the petitioner was in default of payment of monthly allowance for the period of 11 months from 22nd November, 1996 to 1st December, 1997. Feeling aggrieved, the respondent no.1 - wife moved above referred Misc.Application No.2233/2000 under Section 125(3) CrPC before the Family Court, Ahmedabad on 12th December, 1997. The petitioner appeared before the learned Judge and expressed his inability to pay the maintenance as ordered. Thereupon, the learned Judge was, under the impugned order dated 15th September, 2000, pleased to sentence the petitioner to 10 days' Simple Imprisonment for each month of default in payment of monthly allowance. Thus, for default in payment of monthly allowance for 11 months, the petitioner has been sentenced to Simple Imprisonment for 110 days. Feeling aggrieved, the petitioner has preferred the present Revision Application.

#. The order of the learned Judge, Family Court is ex-facie bad and illegal and requires to be quashed and set aside. Section 125(3) CrPC empowers the Court to sentence such person, for the whole or any part of each month's allowance remaining unpaid, to imprisonment for a term which may extend to one month or until payment, if sooner made. The Hon'ble Supreme Court has, in its judgment in the matter of SHAHADA KHATOON AND ORS. vs. AMJAD ALI AND ORS. [(1999) 5 SCC 672], considered the scope and ambit of the above provision and has held that, "the language of sub section (3) of Section 125 is quite clear and it circumscribes the power of the Magistrate to impose imprisonment for a term which may extend to one month or until the payment, if sooner made. Thus, power of the Magistrate can not be enlarged and therefore the only remedy would be after expiry of one month, for breach or non-compliance with the order of the Magistrate the wife can approach the Magistrate again for similar relief. By no stretch of imagination can the Magistrate be permitted to impose sentence for more than one month."

#. In view of the above judgment, it is apparent that the learned Judge could not have imposed punishment of imprisonment for more than 30 days. In the present case, the learned Judge has imposed punishment of Simple Imprisonment for 110 days, which evidently is beyond the jurisdiction of the learned Judge. The order of sentence, therefore, can not be sustained and requires to be set aside.

#. For the above referred reasons, the Revision Application is allowed. The impugned order dated 15th September, 2000 made by the Family Court, Ahmedabad in Misc.Application No.2233/2000 is quashed and set aside. The petitioner be, unless he is required to be detained in some other case, set free forthwith. Rule is made absolute.

27th December, 2001. (Ms. R.M. Doshit, J.)

/sakkaf